

R E M A R K S

The office action of September 17, 2004, has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is requested. Claims 1 through 23 remain in this case, claims 1, 4, 6, 9, 11, 13-14, and 16-18 being amended by this response. No new matter has been added.

Preliminary Comments

The claims were amended as follows, to correct typographical errors and other informalities. The amendments are fully supported by the specification. No new matter was introduced. Specifically:

Claim 1: "surface interrupted by a gutter or culvert" is supported by page 4, lines 24-31 of the specification as filed; "such that a transition to the driveway is smoothed" is supported by page 5, lines 25-26 of the specification as filed.

Claims 1, 4, 6, 9, 11, 13-14, and 16-18: "appurtenant", to which the Examiner has objected, has been removed.

Claim 6: "having a gutter or culvert" is supported by page 5, lines 16-17 of the specification as filed; "such that a transition to the driveway is smoothed" is supported by page 5, lines 25-26 of the specification as filed.

Claim 11: rewritten into dependent form. The limitations already found in claim 6, upon which claim 11 now depends, have been deleted from claim 11.

Claim 16: been rewritten into dependent form. The limitations already found in claim 6, upon which claim 16 now depends, have been deleted from claim 16.

Restriction Requirement

The Examiner has made a restriction requirement and has identified three groups as follows:

Group I - recited in claims 1-10 and 21, drawn to a driveway and method for improving, classified in class 404, subclass 15.

Group II - recited in claims 11-15 and 22, drawn to a method for improving a driveway, classified in class 404, subclass 73.

Group III – recited in claims 16-20 and 23, drawn to a method for improving a driveway, classified in class 404, subclass 75.

The Examiner has made this restriction requirement final.

During a phone interview on July 12, 2004, the Examiner told the Applicant's attorney, Thomas T. Aquilla, that amending independent claim 11 to be dependent from claim 6 would allow rejoinder of Group II (claims 11-15 and 22). Further, the Examiner said that amending independent claim 16 to depend from claim 6 would allow rejoinder of Group III (Claims 16-20 and 23).

With this response, the claim amendments suggested by the Examiner have been made. Claims 11 and 16 have each been amended to depend from claim 6. No new matter has been added.

With the rejoinder of groups II and III into group I, only one group of claims remains, making the restriction requirement moot. Therefore, Applicant requests that the restriction requirement be withdrawn. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

Objections to the Drawings

The drawings were objected to under 37 CFR 1.83(a) as not showing every feature of the invention specified in the claims.

Specifically, the Examiner stated that the driveway and the plurality of speed bumps must be shown or the features cancelled from the claim.

The driveway, as described in the specification on page 5, line 26 and on page 7, lines 7-8, has been labeled with reference numeral (23) in Fig. 2A and Fig. 2C, as well as with reference numeral (43) in new Figure 4.

The plurality of speed bumps, described as "multiple units" on page 7, lines 6-7, are shown in new Figure 4 and labeled with reference numeral (41).

No new matter has been added by these amendments.

The drawings were further objected to because Figure 1 appears to be a piece of non-patent literature rather than a drawing and Figures 2 and 3 have lines, which are not uniformly thick and well defined.

Replacement drawings addressing the Examiner's objections are filed with this office action response. No new matter has been added by these amendments.

Reconsideration and withdrawal of the objections are respectfully requested.

Objections to the Specification

The specification was objected to for not including proper detailed descriptions of the drawings.

The specification has been amended to add reference numerals (11), (21)-(26), (31)-(33), and (41)-(43) in order to provide proper detailed descriptions of the drawings. No new matter has been added by these amendments.

Reconsideration and withdrawal of the objections are respectfully requested.

Objections to the Claims

Claims 1-11 were objected to because the term "appurtenant" appears to be used in a manner inconsistent with its accepted meaning.

The Applicant has removed all instances of the word "appurtenant" from the claims, specifically, claims 1, 4, 6, 9, 11, 13-14, and 16-18.

Reconsideration and withdrawal of the objection are respectfully requested.

Claim 21 was objected to as an improper product-by-process type claim, without any guidance as to why the claim is improper.

The Examiner has provided no reason, statutory basis, or evidence to support the objection, and failed to object to the identical claims 22 and 23, which leaves the Applicant at a loss as to what Examiner feels is "improper" about the claim.

Section 2173.05(p) of the MPEP states: "A product-by-process claim, which is a product claim that defines the claimed product in terms of the process by which it is made, is proper."

The Applicant believes that claims 21-23 are proper product-by-process claims, as described by section 2173.05(p) - that is, the claims claim a product (a driveway) made by a process (the method described in claims 6, 11 and 16, respectively).

If the Examiner continues to sustain this objection, the Applicant asks that the Examiner explain why Applicant's claims 21-23 are improper product-by-process claims.

Reconsideration and withdrawal of the objection are respectfully requested.

Rejections under 35 U.S.C. §103

Claims 1-4 and 6-10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gagle *et al.* (U.S. Patent No. 4,068,968). Applicant respectfully disagrees.

Regarding claims 1 and 6, the Examiner states that "Placement of the speed bump relative to a culvert or gutter is left to one skilled in the art. It would have been obvious to one of

ordinary skill in the art at the time the invention was made to have placed the speed bump of Gagle et al. in contact with a culvert or gutter in order to, for example, present a barrier which diverted traffic from the culvert or gutter, slowed movement of vehicular traffic across the culvert or gutter, or assisted in channeling fluid in the culvert or gutter as desired in a particular situation."

Amended claim 1 claims, in part, "a pre-fabricated speed bump in the culvert or gutter, such that a transition to the driveway is smoothed".

Gagle *et al.* teach a roadway barrier structure, prepared by laying a porous fabric upon a base, bonding a barrier structure upon the porous fabric, and placing a traffic bearing layer over at least a portion of the porous fabric. Gagle *et al.* teach that their invention resists shifting caused by impact, primarily with automobile tires, better than the prior art.

Gagle *et al.* do not teach or suggest a pre-fabricated speed bump in a culvert or gutter, such that a transition to a driveway is smoothed. In fact, Gagle *et al.* teach a barrier structure, which **inhibits an automobile from driving across a surface**. The present invention **facilitates an automobile driving across a surface** by a pre-fabricated speed bump in a culvert or gutter, such that a transition to a driveway is smoothed. Gagle *et al.* teach away from a pre-fabricated speed bump in a culvert or gutter, and therefore it would not be obvious for one of ordinary skill in the art at the time the invention was made to have the speed bump of Gagle *et al.* in a culvert or gutter.

Gagle *et al.* do not teach or suggest Applicant's amended claim 1. Therefore, it is respectfully suggested that independent claim 1 is not obvious over Gagle *et al.* Dependent claims 2-4, being dependent upon and further limiting independent claim 1, should also be allowable for that reason, as well as for the additional recitations they contain.

Amended claim 6 claims, in part, "providing a pre-fabricated speed bump in the culvert or gutter, such that a transition to the driveway is smoothed".

Gagle *et al.* teach preparing a roadway barrier structure by laying a porous fabric upon a base, bonding a barrier structure upon the porous fabric, and placing a traffic bearing layer over

at least a portion of the porous fabric. Gagle *et al.* teach that their preparation resists shifting caused by impact, primarily by automobile tires, better than the prior art.

Gagle *et al.* do not teach or suggest providing a pre-fabricated speed bump in a culvert or gutter, such that a transition to a driveway is smoothed. In fact, Gagle *et al.* teach making a barrier structure, which **inhibits an automobile from driving across a surface**. The present invention **facilitates an automobile driving across a surface** by providing a pre-fabricated speed bump in a culvert or gutter, such that a transition to a driveway is smoothed. Gagle *et al.* teach away from providing a pre-fabricated speed bump in a culvert or gutter, and therefore it would not be obvious for one of ordinary skill in the art at the time the invention was made to have provided the speed bump of Gagle *et al.* in a culvert or gutter.

Gagle *et al.* do not teach or suggest Applicant's amended claim 6. Therefore, it is respectfully suggested that independent claim 6 is not obvious over Gagle *et al.* Dependent claims 7-23, being dependent upon and further limiting independent claim 6, should also be allowable for that reason, as well as for the additional recitations they contain.

Reconsideration and withdraw of the rejection are respectfully requested.

Claims 5 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gagle *et al.*, as applied above, and further in view of Whitney (U.S. Patent No. 4,575,278). Applicant respectfully disagrees.

Applicant believes that claims 5 and 10 are patentable over Gagle *et al.* for the reasons given above in respect to the section 103 rejection of claims 1 and 6, from which claims 5 and 10 depend, respectively. The argument above as to the novelty and non-obviousness of amended claims 1 and 6 over Gagle *et al.* is repeated here by reference.

Regarding claims 5 and 10, the Examiner states that "Gagle *et al.* does not teach channels. Whitney teaches channels in a speed bump in order to facilitate drainage and visibility. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used channels in Gagle *et al.* in order to facilitate drainage and visibility, as taught by Whitney".

Regarding amended claim 1, upon which claim 5 depends, Whitney does not provide what Gagle *et al.* lack. Whitney teaches a lane marker having a reflective coating and optional rain drainage grooves. Whitney does not teach or suggest a pre-fabricated speed bump in a culvert or gutter, such that a transition to a driveway is smoothed.

Gagle *et al.* and Whitney, alone or in combination, do not teach or suggest Applicant's claim 1. Therefore, it is respectfully suggested that independent claim 1 is not obvious over Gagle *et al.* and Whitney. Dependent claim 5, being dependent upon and further limiting independent claim 1, should also be allowable for that reason, as well as for the additional recitations it contains.

Regarding amended claim 6, upon which claim 10 depends, Whitney does not provide what Gagle *et al.* lack. Whitney teaches a lane marker having a reflective coating and optional rain drainage grooves. Whitney does not teach or suggest providing a pre-fabricated speed bump in a culvert or gutter, such that a transition to a driveway is smoothed.

Gagle *et al.* and Whitney, alone or in combination, do not teach or suggest Applicant's claim 6. Therefore, it is respectfully suggested that independent claim 6 is not obvious over Gagle *et al.* and Whitney. Dependent claim 10, being dependent upon and further limiting independent claim 6, should also be allowable for that reason, as well as for the additional recitations it contains.


Reconsideration and withdrawal of the rejection are respectfully requested.

Conclusion

Applicant believes the claims, as amended, are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

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Amendments to the Drawings:

The attached sheets of drawings include changes as listed below. The attached replacement sheets replace the original sheets. No new matter has been added by these amendments.

In response to the Examiner's objections, the changes are as follows.

The figures have been amended to have well-defined lines of uniform thickness.

Reference numeral (11) has been added to Fig. 1.

Reference numerals (21), (22), (23), (24), (25), and (26) have been added to Fig. 2.

Reference numerals (31), (32), and (33) have been added to Fig. 3.

Fig. 4 is new and shows a plurality of speed bumps (41) in a driveway (43) gutter (42), as described in the specification.

Attachment: 4 Replacement Sheets